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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,051	03/26/2004	Subhash P. Vernekar	03108/0201081-US0	7900
7278	7590	08/31/2006		EXAMINER
DARBY & DARBY P.C. P. O. BOX 5257 NEW YORK, NY 10150-5257			LEE, RIP A	
			ART UNIT	PAPER NUMBER
			1713	

DATE MAILED: 08/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/810,051	VERNEKAR ET AL.
	Examiner Rip A. Lee	Art Unit 1713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 23 June 2006.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20 and 23-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-20 and 23-25 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date. _____ .  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

## **DETAILED ACTION**

This office action follows a response filed on June 23, 2006. Claims 1, 6, 7, 10, 20, and 24 were amended, and claims 21 and 22 were canceled. Claims 1-20 and 23-25 are pending.

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 20 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. The claim indicates that the comonomer can not be HDPE. First, HDPE is not a monomer. Secondly, there is nothing in the specification that states that HDPE can not be a comonomer.<sup>†</sup>

### ***Claim Rejections - 35 USC § 102 / 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1, 2, 4-19, and 23-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Marinaccio *et al.* (U.S. 3,637,634/GB 1,202,835) for the same reasons set forth in the previous office action.

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<sup>†</sup> *Ex Parte Grasselli*, 231 USPQ 393 (Bd. App. 1983), *aff'd mem.*, 738 F.2d 453 (Fed. Cir. 1984). Any claim containing a negative limitation which does not have basis in the original disclosure are rejected under 35 U.S.C. 112, first paragraph for failing to comply with the written description requirement. See MPEP § 2173.05(i).

5. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marinaccio *et al.* in view of Lindahl *et al.* (U.S. 6,809,154) for the same reasons set forth in the previous office action.

6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marinaccio *et al.* in view of Thompson *et al.* (U.S. 4,178,421) for the same reasons set forth in the previous office action.

#### *Response to Arguments*

7. Applicants traverse the rejection of claims over Marinaccio *et al.* Applicant's arguments have been considered fully, but they are not persuasive.

The present claims are drawn to a process comprising: (i) forming a gel by dissolving nucleating agent in solvent, (ii) mixing the gel with polyolefin powder, (iii) removing the solvent, and (iv) extruding the mixture. Marinaccio *et al.* teaches (i) dissolution of sodium benzoate in water/alcohol to form a gel, (ii) admixing the resulting mixture with polypropylene powder, and (iii) removing the solvent. After mixing mechanically, the polymer/nucleating mixture is dried at elevated temperature. A step of (iv) injection molding of polypropylene/nucleating agent is disclosed. While there are distinctive differences between the inventive process and that of the prior art, there is no difference between the claimed process and that disclosed in the prior art. Note that Marinaccio *et al.* discloses a process containing the four steps of the instant claims.

Claim 20 remains rejected over Marinaccio *et al.* in view of Lindahl *et al.* One of ordinary skill in the art would find it obvious to arrive at the claimed amount of comonomer.

Claim 3 remains rejected over Marinaccio *et al.* in view of Thompson *et al.* One with even minimal skill in the art would have found it obvious to raise the temperature of solvent to dissolve solute. Even if he were woefully uninformed, he would find it obvious after reading the teachings of Thompson *et al.*

In view of this and previous discussion, the rejections of record have not been withdrawn.

***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Prior Art***

9. The prior art made of record but not relied upon is considered pertinent to the Applicant's disclosure.

DiNardo *et al.* (U.S. 5,837,177) discloses a process of combining an aqueous solution of sodium benzoate with polypropylene resin and extruding the resulting mixture to produce nucleated polypropylene.

Weissberger *et al.* (U.S. 4,666,959) discloses addition of sodium benzoate nucleating agent as a solution in *n*-propanol-water azeotrope to polypropylene homopolymer.

Kobayashi *et al.* (JP 8-239386) teaches a process comprising forming a gel containing a dibenzylidene sorbitol derivative and subsequently removing solvent from the gel. The resulting crystalline nucleating agent is added to polyolefin based resins.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rip A. Lee whose telephone number is (571)272-1104. The examiner can be reached on Monday through Friday from 9:00 AM - 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu, can be reached at (571)272-1114. The fax phone number for the organization where this application or proceeding is assigned is (571)273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <<http://pair-direct.uspto.gov>>. Should you have questions on the access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

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August 27, 2006

  
DAVID W. WU  
EXERCISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700